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Wagner, W.M.

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Wolfgang Wagner

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## Review section

Edited by Thomas Christiansen

### ANALYSING THE EUROPEAN POLITICS OF INTERNAL SECURITY

Wolfgang Wagner

Knelangen, Wilhelm (2001) *Das Politikfeld innere Sicherheit im Integrationsprozess. Die Entstehung einer europäischen Politik der inneren Sicherheit* (Opladen: Leske & Budrich) ISBN 3 8100 3101 1 (PSI)

Mitsilegas, Valsamis, Monar, Jörg and Rees, Wyn (2003) *The European Union and Internal Security. Guardian of the People?* (Basingstoke: Palgrave) ISBN 0 333 96861 1 (EUIS)

Müller, Thorsten (2003) *Integrierte Innen- und Justizpolitik der EU. Eine Analyse der Integrationsentwicklung* (Opladen: Leske & Budrich) ISBN 3 8100 4001 0 (IIJEU)

Occhipinti, John (2003) *The Politics of EU Police Co-operation. Toward a European FBI?* (Boulder, CO/London: Lynne Rienner) ISBN 1 58826 118 2 (PEUPC)

### A LATE COMER IN EUROPEAN INTEGRATION

Until very recently, the issue area of internal security has been a largely unknown territory to most students of European integration, although Monika den Boer and Jörg Monar have been noteworthy exceptions.<sup>1</sup> This may not come as a surprise, considering that internal security itself is a late comer in European politics. Though the wave of terrorism in the 1970s elicited some co-ordination among the interior ministers of the European Community, co-operation in the framework of the so-called TREVI group ('terrorisme, radicalisme, extrémisme et violence internationale') remained outside the Treaty

framework, informal, behind closed doors, and did not yield any legal activities. TREVI simply appeared too marginal to merit much academic research.

The situation changed in the early 1990s when the Maastricht Treaty made 'Justice and Home Affairs' one of three pillars of the European Union (EU). Since then developments from within that pillar were reported on a regular basis, to a large extent by participants in the decision-making process and their advisers from various think tanks.<sup>2</sup> In the 'grand debates' among theorists of European integration of the time, however, Justice and Home Affairs remained conspicuously absent. Because scholarly interest appeared focused on the first pillar and its unique institutional setting, asylum and migration policies were the first issue areas to attract broader attention, especially after they were communitarized with the Amsterdam Treaty. By the same token, police and judicial co-operation in criminal matters (as the remnants of the third pillar are called) continued an existence outside the European as well as the EU studies community.

The 1999 special European Council on justice and home affairs in Tampere and, of course, the terrorist attacks of September 11th, marked an end to that 'splendid isolation'. Over the last couple of years, internal security has become one of the most dynamic issue areas of European integration.

### TAKING STOCK

The authors of the four volumes under consideration here all agree that recent developments of internal security co-operation are remarkable and call for an explanation. Notwithstanding their theoretical ambitions (see below), the studies under consideration are primarily dedicated to the description of EU internal security co-operation. In doing so, the authors have focused on different main points and have chosen different ways of presentation.

The most detailed account is given by John Occhipinti in *PEUPC*. Although developments in asylum and immigration policy, as well as the respective larger context of European integration, are usually mentioned, *PEUPC* focuses on criminal justice and police co-operation proper. An important structuring principle of his account are the consecutive Presidencies. This structure highlights the changing agenda of internal security co-operation, often in response to external events such as the tragic death of Chinese illegal immigrants (giving rise to the fight against human trafficking), the introduction of the euro (leading to priority given to the search for measures against counterfeiting) and, of course, the changing agenda of combatting terrorism in the aftermath of September 11th. In addition, this structure highlights the stops and starts of various proposals in the Byzantine institutional structure. The disadvantage of this structure, however, is that the major controversies of the time are not necessarily about the most important issues, as the lengthy discussion on the failed agreement on the location of the European Police College (CEPOL) may illustrate.

In contrast to *PEUPC*, *PSI* focuses on the macro level of European internal security co-operation, i.e. on the fundamental principles and institutions of

internal security co-operation that member state governments negotiated in the Schengen agreement and the treaties of Maastricht and Amsterdam. Although no effective transfer of competencies from the member states to the EU has taken place, Knelangen concludes in *PSI*, a European internal security policy has emerged which has transformed that issue area's traditionally close link to the nation state.

Unlike both *PEUPC* and *PSI*, *IJEU* (and to a lesser degree *EUIS*) chose a systematic rather than a chronological structure. In *IJEU*, five indicators are used to capture the Europeanization of justice and home affairs systematically. 'Institutionalization' refers to the creation and further development of institutions (including increases in budget and personnel), whereas 'constitutionalization' refers to the commoditization of policies. 'Decision-making capacity' is used to measure the amount of legislation as well as the frequency of meetings of the Council, working groups, etc. Somewhat surprisingly, 'differentiation' refers to the range of issues covered. Finally, 'externalization' adds the growing number of contacts and agreement with third countries to the picture. Taken together, these indicators give a comprehensive picture of the emerging issue area.

## INVESTIGATING THE CAUSES

In addition to presenting the most important features of internal security co-operation, all the authors also investigate the causes of this development. Although differences in delimiting competing theories and in emphasis remain, the consensus on the main features of the causal story is striking. Such a basic consensus has been possible only because none of the authors starts from a strong commitment to a certain theoretical camp and no one has used internal security co-operation primarily as a case to promote his theoretical claims. Instead, the authors clearly privilege capturing complexity over offering parsimonious theoretical explanations.

That explanatory consensus holds that internal security co-operation has been driven by a mix of two important factors (the complementary, rather than mutually exclusive, nature of the theories is stressed by all authors). First, the EU member states have become unable to meet the transnational challenges of organized crime and terrorism unilaterally and therefore have strong incentives to co-operate. To a large extent, these transnational challenges have emerged from outside the Community, such as the terrorist attacks of September 11th. However, the already existing level of integration, particularly among the members of the Schengen area, has further stimulated a collective response. Moreover, some challenges such as combatting counterfeiting of the euro have emerged from inside the Community, providing even clearer evidence for the notion of 'functional spill-over'. In sum, the authors agree that the functional links between economic integration (including the free movement of people and a single currency) and internal security co-operation are significant. A major portion of the explanatory merits are therefore credited to neofunctionalist theorizing.

The incentives to co-operate on internal security are balanced, however, by another explanatory factor, on whose importance the authors agree, namely the reluctance of member state governments to relinquish competencies in an issue area 'that touches the very nerve of the modern nation-state' (*EUIS*, p. 7). The secrecy of the TREVI group, the intergovernmental set-up of the third pillar of the Maastricht Treaty, the maintenance of unanimity until the present are all attributed to the member states' interest in preserving their sovereignty. Thus, intergovernmental theorizing is regarded as an indispensable complement to neofunctionalism.

While there is a consensus on the main argument, the authors place different emphases. According to the authors of both *PSI* and *EUIS*, common membership in international institutions has fostered mutual understanding of national traditions, for example between common law and civil law countries (*EUIS*, p. 12). In particular, several decades of co-operation in the Council of Europe have 'created gradually a more favourable climate for co-operation on internal security issues' (*EUIS*, p. 21). Drawing on the same causal mechanism but pointing to a different institution, *PSI* argues that co-operation in the EU framework itself has helped common perceptions and mutual trust to emerge.

In *PEUPC*, Occhipinti adds that 'federalism' and 'concerns for democracy' have given internal security co-operation some impetus occasionally. Whereas federalist convictions led the German government to put justice and home affairs on the agenda of the Maastricht negotiations, concerns for democracy help to explain why the European Parliament (and to a lesser degree the European Court of Justice) have gained competencies. Drawing on Tranholm-Mikkelsen's distinction between functional, political and cultivated spill-over (Tranholm-Mikkelsen 1991), these explanatory factors could be integrated into the neofunctionalist perspective.

Taken together, the theoretical tool-kit which has been elaborated on the EU's first pillar seems to go a long way in explaining internal security co-operation as well. At the same time, however, several authors appear uncomfortable with what Didier Bigo has called 'security continuum' assigning causal connections to open borders, immigration and organized crime. Whereas the author of *PSI* raises qualms as a noteworthy caveat, *PEUPC* points to the importance of perceptions and even reports data from Germany's federal office of criminal investigations to buttress them (p. 73). Drawing on securitization theory as developed by the Copenhagen school, however, *EUIS* goes furthest in addressing the problematic link between open borders and transnational crime. Securitization theory holds that threats are socially constructed in a process of 'securitization' during which an issue is framed as requiring special action, frequently beyond established rules of the political system (Buzan *et al.* 1998). Building on the works of Jeff Huysmans and Didier Bigo, the authors demonstrate that the notion of security is the centre of gravity within the 'area of freedom, security and justice'. The meaning of 'freedom' in particular has been defined as a 'freedom to live in a law abiding environment'.<sup>3</sup>

As for European security and defence policy, the 'securitization' approach

helps to highlight some special features of internal security co-operation that distinguishes it from the bulk of European Community politics. Most importantly, the Europeanization of internal security helps national security actors to elevate internal security beyond the limits established by routine politics such as data protection and judicial review requirements. The establishment of a security-centred 'area of freedom, security and justice' appears to illustrate Klaus Dieter Wolf's notion of the new *raison d'État*, i.e. the deliberate strategy of state executives to expand their room for manoeuvre by transferring an issue from the national to the European arena (Wolf 1999). As *EUIS* points out, internal security is unlikely to be de-securitized in the foreseeable future because proponents of European integration (with the European Commission in particular) have recognized it as a vehicle to gain legitimacy and popularity among citizens.<sup>4</sup>

Thus, internal security co-operation has also become closely linked to issues of legitimacy and democracy. Whether Europeanization will lead to a governance of internal security which is dominated by security agencies and their concerns with control and surveillance, or whether such a move will ultimately accelerate 'the process of establishing a kind of constitutional superstructure for the enforcement of civic rights and liberties' (Eder and Trenz, 2003) is likely to remain a topic of (academic) debate for some time to come. The deliberations and negotiations in the constitutional Convention provide ample material to be studied.

### RIPE FOR THE GOVERNANCE APPROACH?

In most issue areas, analysing the causes of integration has been supplemented by studying the actual working of the European institutions. In doing so, adherents of the so-called governance approach have treated the European institutions as independent, rather than dependent, variables (cf. Jachtenfuchs 2001). A precondition for such a treatment, however, has been a sufficiently stable and effective set of institutions, norms and rules governing the issue area under consideration. Notwithstanding the continuous dynamic of this issue area, internal security co-operation now seems sufficiently advanced to warrant a respective treatment.

Much research on European governance has addressed the question of whether the European polity systematically privileges the interests of producers in dismantling barriers to free trade over the concerns of consumers and employees in maintaining high standards of social or environmental protection (cf., among many others, Scharpf 1999). A similar question should be addressed regarding the 'area of freedom, security and justice': Does the Europeanization of justice and home affairs systematically privilege the interests of those providing security (most importantly, the police) over citizens' concerns about civil liberties and democratic accountability?

The analysis in *EUIS* has highlighted that the discourse in justice and home

affairs is heavily securitized. This analysis should be supplemented, however, by a thorough analysis of how the institutional set-up of internal security co-operation impacts on internal security *policy*. Here, the principle of mutual recognition of judiciary decisions endorsed at the Tampere European Council may play a role similar to the 1979 *Cassis de Dijon* judgment of the European Court of Justice which introduced the principle of mutual recognition of national regulations and standards, and thereby paved the way for the internal market. As with the common market, the benefits of Europeanization may be distributed unequally between various interest groups. So far, the main beneficiaries of mutually recognizing judicial decisions have clearly been the various security-providing agencies whose reach has been extended to the territories of all EU members. Member states with high standards of defendants' rights or data protection may therefore be concerned that these standards may be undermined by a Europeanization of internal security policy. Taking the single market as a model, the constitutional convention has therefore suggested that member states shall not be prevented from 'maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure' (art. III-171).

To bring 'freedom', 'security' and 'justice' back into balance, however, common standards for defendants' rights, data protection and the like appear indispensable. As measures of positive integration in general, however, such standards may be more difficult to achieve than the dismantling of barriers to criminal prosecution because an explicit consensus in the Council is required. The literature on the prospects of positive integration could be very helpful in assessing the future balance between security concerns and individual rights. By the same token, internal security co-operation is an interesting case for scholars of European governance seeking to engage with the dynamics of securitization and concerns for individual rights.

**Address for correspondence:** Wolfgang Wagner, Peace Research Institute Frankfurt (PRIF), Leimenrode 29, 60322 Frankfurt am Main, Germany. Tel: +49 69 95910448. email: wwagner@hsfk.de

## NOTES

- 1 Cf., among many other pieces, den Boer (1996) and Monar (2001). Further pioneering studies include Anderson *et al.* (1996); Bigo (1992); Bieber and Monar (1995); Turnbull and Sandholtz (2001).
- 2 Insiders' perspectives have been given by Wenceslas de Lobkowicz and Hans Claudius Taschner (both European Commission); Willy Bruggeman and Jürgen Storbeck (both Europol); Klaus Peter Nanz, Kurt Schelter, Markus Hellenthal and Reinhard Rupprecht (all German Ministry of the Interior).
- 3 Vienna Action Plan (1998), quoted from *EUIS*, p. 36.
- 4 Indeed, survey data from Eurobarometer make clear that a vast majority of citizens want organized crime and terrorism to be fought at a European rather than at a nation-state level.



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